

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter Of)	
)	
)	WT Docket No. 02-276
Disposition of Down Payments and)	
Pending Applications for Licenses)	
Won During Auction No. 35 for Spectrum)	
Formerly Licensed to NextWave)	
Personal Communications, Inc.,)	
NextWave Power Partners, Inc., and)	
Urban Comm – North Carolina, Inc.)	
)	
)	

COMMENTS OF QUALCOMM INCORPORATED

QUALCOMM Incorporated (“QUALCOMM”), by its attorneys, hereby states its strong support for the Commission’s proposal to allow the Auction 35 high bidders to voluntarily dismiss individual applications and to obtain a complete refund of down payments associated with those applications, the so-called selective opt-out proposal discussed in the Commission’s Public Notice, FCC 02-248, released September 12, 2002 (“Public Notice”). It is not in the public interest for the Commission to continue to saddle the Auction 35 high bidders with billions of dollars in contingent obligations and to keep hundreds of millions of their dollars tied up, given that the FCC is unable to deliver the licenses auctioned in Auction 35 and will not be able to do so for anytime in the foreseeable future.

In particular, the Auction 35 high bidders include carriers that are in the midst of deploying innovative 3G high speed data services, using QUALCOMM’s CDMA2000 1x technology, and that are also devoting substantial resources to meeting other Commission mandates, such as E911, CALEA, and Local Number Portability. These carriers deserve to have the option of freeing up their balance sheets immediately and getting their down payments back

right away so that they can deploy capital in accordance with market needs and so that they can continue to provide quality service to their customers. See J. Gregory Sidak, THE ECONOMIC BENEFITS OF PERMITTING WINNING BIDDERS TO OPT OUT OF AUCTION 35 at 23-24 (Aug. 21, 2002) (noting that much of the capital tied up in Auction 35 deposits and “debt overhang” could be used for network infrastructure improvements).

Auction 35 concluded almost two years ago, and yet the Commission has not been able to deliver the licenses and is not anywhere close to being able to do so. Given the other important and highly worthwhile uses of capital for wireless carriers, the Commission should put this matter to rest and adopt the selective opt-out proposal as soon as possible.

Respectfully submitted,

By: /s/ Dean R. Brenner
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